

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**SHAWN HANDYSIDE,**

**Plaintiff,**

**vs.**

**1:21-CV-422  
(MAD/DJS)**

**BERNARD ATKINS and ETSY, INC.,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**SHAWN HANDYSIDE**

321 25th Street  
Apartment A  
Watervilet, New York 12189  
Plaintiff *pro se*

**Mae A. D'Agostino, U.S. District Judge:**

**ORDER**

On April 14, 2021, Plaintiff commenced this action against Defendants Bernard Atkins and Etsy Inc. *See* Dkt. No. 1. Plaintiff's complaint alleges a cause of action under The Digital Millennium Copyright Act "DMCA", 17 U.S.C. § 1201, *et seq.* *See* Dkt. No. 1 at 3. On April 16, 2021, in a Report-Recommendation and Order, Magistrate Judge Stewart recommended that Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* be denied pursuant to 28 U.S.C. § 1915(e)(2)(a), as Plaintiff is capable of paying the full filing fee of \$402. *See* Dkt. No. 5. Plaintiff filed objections to the Report-Recommendation and Order on May 19, 2021. *See* Dkt. No. 6.

When a party files specific objections to a magistrate judge's report-recommendation and

order, the district court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). However, when a party files "[g]eneral or conclusory objections or objections which merely recite the same arguments [that he presented] to the magistrate judge," the court reviews those recommendations for clear error. *O'Diah v. Mawhir*, No. 9:08-CV-322, 2011 WL 933846, \*1 (N.D.N.Y. Mar. 16, 2011) (citations and footnote omitted). After the appropriate review, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

Having carefully reviewed the April 16, 2021 Report-Recommendation and Order, as well as Plaintiff's May 19, 2021 Objections, the Court finds that Magistrate Judge Stewart correctly determined that Plaintiff has the ability to pay the entirety of the \$402 filing fee. Even when construed liberally, Plaintiff's Objection fails to contain a specific challenge to a finding or conclusion contained in the Report-Recommendation and Order. To be "specific," the objection must, with particularity, "identify [1] the portions of the proposed findings, recommendations, or report to which it has an objection and [2] the basis for the objection." N.D.N.Y. L.R. 72.1(c).<sup>1</sup> Therefore, the Report-Recommendation and Order is subject only to clear-error review. As Magistrate Judge Stewart properly noted, Plaintiff earns an hourly income of \$16 per hour, has \$12,000 in a checking account, and pays approximately \$1,555 per month in expenses. *See* Dkt. No. 2 at 1-2. As such, the Court finds that Plaintiff possesses sufficient funds to pay the requisite

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<sup>1</sup> *See also Mario v. P&C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Although Mario filed objections to the magistrate's report and recommendation, the statement with respect to his Title VII claim was not specific enough to preserve this claim for review. The only reference made to the Title VII claim was one sentence on the last page of his objections, where he stated that it was error to deny his motion on the Title VII claim '[f]or the reasons set forth in Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgment.' This bare statement, devoid of any reference to specific findings or recommendations to which he objected and why, and unsupported by legal authority, was not sufficient to preserve the Title VII claim.").

filing fee without risk of financial hardship, and for the reasons stated herein, the Court hereby

**ORDERS** that Magistrate Judge Stewart's Report-Recommendation and Order is  
**ADOPTED in its entirety**; and the Court further

**ORDERS** that Plaintiff's motion to proceed *in forma pauperis* is **DENIED**, and the Court  
further

**ORDERS** that Plaintiff shall pay the required statutory filing fee within THIRTY (30)  
DAYS of the date of this Order if he wishes to proceed with this action, and the Court further

**ORDERS** that, if Plaintiff fails to pay the statutory filing fee within THIRTY (30) DAYS  
of the date of this Order, the Clerk of the Court shall enter judgment in Defendants' favor and  
close this case without further order of the Court.

**IT IS SO ORDERED.**

Dated: June 15, 2021  
Albany, New York

  
Mae A. D'Agostino  
U.S. District Judge